

R.D. # 0006-02  
Old Bridge, NJ

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**REFORMED CHURCH HOME**

Employer

and

**ROZALINDA RAQUIZA, AN INDIVIDUAL**

Petitioner

**CASE 22-RD-1341**

and

**LOCAL 1040, COMMUNICATIONS WORKERS  
OF AMERICA, AFL-CIO**

Intervenor

**DECISION AND DIRECTION OF ELECTION**

Rozalinda Raquiza, an Individual, filed a petition under Section 9(c) of the National Labor Relations Act, as amended, seeking to decertify the incumbent Intervenor, Local 1040, Communications Workers of America, AFL-CIO. The Intervenor, contrary to the Employer and the Petitioner, asserted that there exists a contract bar which would preclude the processing of the petition. For the reasons described below I find that there is no contract bar and, I will direct an election in the appropriate unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,<sup>1</sup> I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>
3. The labor organization involved claims to represent certain employees of the Employer.<sup>3</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons described below.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.<sup>4</sup>

**All full-time and regular part-time and pool and per diem employees who work an average of eight or more hours per week, including maintenance**

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<sup>1</sup> All parties waived the filing of briefs.

<sup>2</sup> The Employer, a New Jersey corporation, is engaged in the provision of long term skilled nursing care and assisted living and related services at its Old Bridge, New Jersey facility, the only location involved herein.

<sup>3</sup> The record is silent as to the basis upon which the Intervenor was permitted to intervene. Nevertheless, I have taken administrative notice that the Intervenor was certified on November 20, 2000 in Case 22-RC-11967 as the exclusive collective bargaining representative of the unit involved herein. Further, there is no evidence that the Intervenor has disclaimed interest in representing the employees in the unit. Accordingly, I find that the Intervenor was properly allowed to intervene in this proceeding. The parties stipulated and I find that the Intervenor is a labor organizations within the meaning of Section 2(5) of the Act.

<sup>4</sup> The unit description is in accord with the certified unit, which I find to be appropriate for purposes of collective bargaining. *Campbell Soup Company*, 111 NLRB 234 (1955); *Mo's West*, 283 NLRB 130 (1989). There are approximately 85 to 90 employees in the unit.

**staff employees, laundry aides, housekeeping aides, dietary aides, utility persons, prep cooks and certified nursing assistants employed by the Employer at its 1900 Route 18, Old Bridge, New Jersey location, excluding all other employees including office clerical employees, business office clerical employees, managerial employees, confidential employees, registered nurses, licensed practical nurses, guards and supervisors, including the maintenance supervisor, housekeeping supervisor, laundry supervisor, cook supervisor, food service manager, registered nurse supervisor, licensed practical nurse supervisor and department directors, as defined in the Act, and all other employees.**

## **I. Facts**

The Intervenor was certified as the exclusive collective bargaining representative of the unit on November 20, 2000. Thereafter, the Employer and the Intervenor commenced collective bargaining for an initial agreement. The Intervenor, contrary to the Employer, contends that a collective bargaining agreement was reached in or about May 2002, which was subject to a ratification of the membership at a meeting scheduled for June 4, 2002.<sup>5</sup> The Intervenor proffered no evidence to support its mere assertion that there is a collective bargaining agreement in effect between it and the Employer. Further, there is no evidence that a signed, written collective bargaining agreement exists between the Employer and the Intervenor.

## **II. Board's Contract Bar Policy**

The Board's contract bar rules are clear. To serve as a bar to an election, a contract must meet certain basic requirements; these requirements are set out in the Board's decision in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). In this regard, a contract must be reduced to writing and executed by the parties; it must also

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<sup>5</sup> The petition in this matter was filed on May 22, 2002 and the hearing thereon was conducted on June 3, 2002.

be clearly identifiable as a controlling document and contain substantial terms and conditions of employment. The Board has also held that an oral agreement does not constitute a bar. *Empire Screen Printing*, 249 NLRB 718 (1980); *Sullivan & Sons Mfg. Corp.*, 105 NLRB 549 (1953).

The primary objective of the Board's contract bar policy is to achieve a reasonable balance between the often conflicting goals of industrial stability, on the one hand, and freedom of employees' choice, on the other. The policy is intended to afford the contracting parties and the employees a period of stability in their relationship, without interruption, and at the same time provide employees the opportunity, at reasonable times, to change or eliminate their bargaining representative if they wish. *Hexton Furniture Co.*, 111 NLRB 342 (1955). *Appalachian Shale Products Co.*, above at 1163.

### III. Analysis of Instant Case

The record discloses no probative evidence that the Employer and the Intervenor, as of the date of the instant hearing, have either agreed to or executed a collective bargaining agreement. In these circumstances, noting the absence of a collective bargaining agreement, I find that there is no contract bar to an election herein. *Appalachian Shale Products Co.*, supra.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible

to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 1040, Communications Workers of America, AFL-CIO.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all

parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, Veterans Administration Building, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102, on or before June 14, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by June 21, 2002.

Signed at Newark, New Jersey this 7<sup>th</sup> day of June 2002.

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J. Michael Lightner, Acting Regional Director  
NLRB Region 22  
Veterans Administration Building  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

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